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07 Civ. 5815

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Millennium Pipeline Company, L.L.C.,

Plaintiff

Assigned Judge:
Hon. Mark D. Fox,
US Magistrate JDC

-against-

Certain Temporary Easements in 322 Sleepy Valley Road,
Town of Warwick, Orange County, new York, S.B.L. No.
31-1-17, Breakaway Trails, Inc., John Doe, et al., and
Unknown Owners,

And

Certain Permanent and Temporary Easements in (No
Number) Distillery Road, Town of Warwick, Orange County,
New York, S.B.L. No. 29-1-21, George Burkert and Anna
Burkert, John Doe, et al., and Unknown Owners,

And

Certain Permanent and Temporary Easements in (No
Number) Route 42, Town of Forestburg, Sullivan County,
New York, S.B.L. No. 39-1-11, Adelia M. Masters, John
Doe, et al., and Unknown Owners,

And

Certain Permanent and Temporary Easements in 65 Liberty
Corners Road, a/k/a 61 Liberty Corners Road, Town of
Warwick, Orange County, New York, S.B.L. No. 11-1-21.2,
Douglas A. Patzelt and Lauren Patzelt, John Doe, et al., and
Unknown Owners,

And

Certain Permanent and Temporary Easements in (No
Number) Route 17A, Town of Tuxedo, Orange County, New
York, S.B.L. No. 1-1-34.2, Swiss North American Properties-
USA, LLC, John Doe, et al., and Unknown Owners,

Defendants.

**Affirmation of Neal D. Frishberg in Opposition to
Plaintiff's Motion for a Preliminary Injunction**

State of New York)
 S.S.
County of Orange)

Neal D. Frishberg, of the Law Offices of Neal D. Frishberg, attorney for the Defendant Breakaway Trails, Inc. ("Breakaway") and an attorney duly licensed to practice law in the state of New York affirms the following to be true under the penalties of perjury:

1. I submit this affirmation in opposition to that portion of the motion by Millennium Pipeline Company, LLC ("Millennium") for an order granting it a preliminary injunction prohibiting any interference by Breakaway concerning the replacement of approximately 2,600 feet of gas pipe on Breakaway's property.

2. The facts set forth below are based on my review of Breakaway's records and the conversations I have had with Mozafar Rafizadeh, Breakaway's principle shareholder.

3. As demonstrated in the accompanying Memorandum of Law, Millennium's Motion for a Preliminary Injunction should be denied because:

- a. Millennium does not have an Order of Condemnation; and
- b. Millennium has not demonstrated it will suffer actual and imminent irreparable harm.

4. Moreover, as demonstrated below as well as in Point II of the accompanying Memorandum of Law, Millennium has not offered to adequately protect or compensate Breakaway for the damage it will cause when it replaces the pipe on Breakaway's property.

5. In 1994 Breakaway purchased approximately 80 acres of vacant land in Warwick,

New York for about \$600,000 with a view towards developing the same.

6. More recently, Breakaway has an approved 15-lot subdivision in which Breakaway expects to build 15 single-family homes on lots that range from 3 to 4 acres.

7. Breakaway has spent about \$200,000 in pre-development costs, has a loan for \$1 million and expects to borrow an additional \$1 million to further develop the property.

8. The \$1 million loan is amortized over 20 years with a 5 year balloon payment.

9. The existing pipeline runs through Lots 1 through 10, inclusive, according to Map No. 421-07 entitled "Final Subdivision of Sleepy Valley Acres, Inc." filed on May 7, 2007 with the Orange County Office of the Clerk. MJS Engineering and Surveying, P.C. (Mike Sanders) prepared the map. A copy of the map is annexed as **Exhibit A**.

10. The work easement being sought in this action most adversely affects lots 7, 8, 9, and 10 because construction will take place in front of each prospective house to be built.

11. Each home will cost approximately \$800,000.00. The value of each lot is approximately \$400,000.00. Breakaway will sell each house for \$1.8 million.

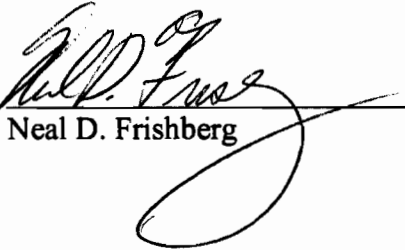
12. The damages to Breakaway include but are not limited to:

- a. The destruction of a portion of the property including the removal of mature trees; and
- b. The cost of delaying the construction and sale of the homes to be built on four lots.

9. If the court permits Millennium access to Breakaway's property, Breakaway will be unable to develop the same.

10. Breakaway will lose the ability to sell four houses for \$1.8 million dollars each - a total of \$7.2 million. The interest alone on this amount at a modest 5% return is \$360,000. In addition, Breakaway is paying back a \$1 million dollar loan with interest. And yet, Millennium only seeks to post a bond of \$13,000.

Dated: July 12, 2007



Neal D. Frishberg

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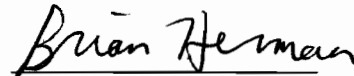
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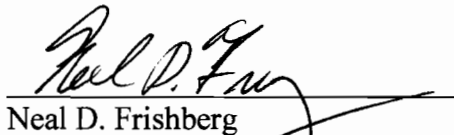
Affidavit of Service

State of New York)
 S.S.
County of Orange)

Brian Herman being duly sworn deposes and says: that I am not a party to this action, am over 18 years of age and reside in Monroe, New York; that on **July 12, 2007** I served the within **Affirmation in Opposition to Plaintiff's Motion for a Preliminary Injunction** by transmitting the papers by electronic means to the telephone of the attorneys set forth on **Schedule A** which number was designated by the attorney for such purpose. I received a signal from the equipment of the attorney served indicating that the transmission was received, and at the addresses designated by each person for that purpose by depositing a true copy of the same enclosed in a post-paid properly addressed wrapper, prior to the latest time designated by that service for regular delivery.


Brian Herman

Sworn to before me
on July 12, 2007


Neal D. Frishberg
Notary Public, State of New York
No. 02FR4839643
Qualified in Orange County
Commission Expires on May 31, 2011

Schedule A

Darryl J.Colosi, Esq.
Hiscock & Barclay, LLP
Standard Oil Building
26 Broadway
24th Floor
New York, NY 10004-1840

Exhibit A

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